IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

CRL.A.No. 874 of 1999(D)

SC.6/1997 of ASSISTANT SESSIONS COURT, SULTHAN BATHERY
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APPELLANT: COMPLAINANT

STATE OF KERALA, REP.BY
THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

RESPONDENT: ACCUSED

PUTHAN PURAYIL SUKUMARAN,
S/O. NARAYANAN,
NEERVARAM, PANAMARAM, PANAMARAM VILLAGE.

BY ADV. SRI.LALJI P.THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON 07/09/2007THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO.874 OF 1999

DATED THIS THE 7th SEPTEMBER 2007

JUDGMENT

The State has filed the appeal seeking to set aside the verdict of the Sessions Judge acquitting the accused in S.C.No.6/1997/Crime No.119/91 of Kambalakkad police station with respect to the offences under sections 498 A and 304 B of the Indian Penal Code.

2. The prosecution case is that Omana, wife of the accused along with her infant child on 14-9-1991 jumped into the Panamaram river and committed suicide as the accused subjected to her physical and mental cruelty demanding more dowry.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 18 and Exts.P1 to P14 and Mos. 1 to 7. The defence got marked Exts.D1 to D5, the contradictions in the C.D.of Pws.2,4,6 and 15.

4. It is PW1, the brother of the deceased and PW2, the

mother and PW15, a lady residing near the parental house of the deceased, who have testified as to the cruelty that was being perpetuated by the accused. PW4 has stated that on the particular day he heard the sounds of quarrel and the deceased weeping when he was in the tea shop of the accused which constitute a part of the dwelling unit wherein the accused and the deceased were residing.

5. The trial court found that the evidence adduced is hardly sufficient to establish the guilt of the accused. The court has noted that the complaint admittedly filed by Pw1 earlier to the information on the basis of which the crime was registered has not been produced. It is noted that the above lapse is relevant as PW1 has admitted that there was no allegations of cruelty in the above complaint. It is also pointed out that in the F.I.S. lodged on the next day of the incident, there was no specific allegations of cruelty on the part of the accused but it is only mentioned that there used to be quarrel at times between the deceased and the accused. It was also noted that PW2, the

mother in her deposition has admitted that most of the allegations made before the court were not mentioned to the police when questioned under Section 161 Cr.P.C. There is no case that the accused ever made any demand of dowry to the parents of the deceased. It was also noted that there was no incidence of the accused sending the deceased to her parental house or any mediation talks with respect to harassment alleged or there was no complaints before any authorities as to the alleged cruelty. Hence, it was found that the evidence of Pws.1 and 2 brother and mother is not corroborated by any other circumstances. It is also noted that the neighbours of the house of the accused and the deceased were not cited as witnesses and that PW6, a resident of the locality has not supported the prosecution. It is pointed out that the evidence of Pws. 4 and 15 cannot be trusted. PW15 was subsequently inducted during n trial. She was not cited as a witness in the final report and it is at the fag end of the trial that she was sought to be examined. Further PW15 has admitted that she was not questioned by the

police. So there is no previous statement so far as she is concerned. The time mentioned by PW4 that he was in the tea shop does not tally.

6. It is pointed out by the counsel for the respondent/accused that PW1, the brother has admitted that the deceased was a lady who used to get easily dejected. It is contended that the incident might have been the result of a sudden depression on account of some minor quarrel in between the husband and the wife.

7. The incident has allegedly taken place on 14-9-1991 at about 3.30 p.m. about three years subsequent to their marriage that took place on 18-1-1989. The F.I.S. was lodged on the next day at 10.45 a.m. It is the case that the accused had insisted for exchange of some other property for the 50 cents of property that was gifted to the deceased as per Ext.P12 settlement deed which is dated about six months prior to the date of the incident. According to the prosecution he has cut and sold the trees standing in the property and as he wanted to sell the same there

was no purchasers. It is also alleged that the accused was insisting for the remaining sovereigns that he has promised to be given to the deceased at the time of marriage. It is stated that the deceased was given only 3 ½ sovereigns but there was a promise to give 7 sovereigns.

8. It was brought out that PW1 had filed a complaint before the police which was prepared by a document writer. It is also admitted by PW1 that there was no allegations against the accused in the above complaint. The above complaint was with respect to man missing. PW14, the Head Constable who registered Ext.P11 F.I.R. had denied the receipt of any such complaint. As noted by the trial court even in the F.I.S. rendered on the next day at 10.45 a.m. the only allegations made is that there used to be quarrel at times between the accused and the deceased and this might have led to the death of the deceased. There was no allegation in the F.I.S. that the accused used to manhandle or harass the deceased demanding dowry. PW1 has stated that on the previous date of the incident

he had met the deceased when she was at the tea shop and she asked him to take food but he promised to come to her house on his return but he could not keep the word. According to him, she was found in a depressed mood. He has admitted in the cross examination that he has not stated about the above incident before the police. He has also stated that the demand for dowry or the demand to exchange the property has not been mentioned when questioned by the police. He has also stated that the death was on account of the harassment of the accused has also not been mentioned to the police. He has admitted that the accused was not having any bad habit or the habit of consuming liquor. It is the case of PW2 that the deceased committed suicide also on account of the fact that the accused was having illicit relationship with PW7, a lady residing in the nearby who has been allegedly impregnated by the accused. PW7 has denied any such incident or connection with the accused. According to PW2, the mother, the possession of 50 cents of property was given to the accused at the time of marriage itself

and the document was executed subsequently. According to her, he had demanded through the deceased to transfer the property that is lying on the road side in exchange for the property gifted to the deceased. She has stated that the accused used to ill-treat the deceased and that on the previous date of the incident she has seen the deceased standing in the court yard of the house and weeping as she was beaten up by the accused. She has stated that she asked the deceased to accompany her. She has also stated that on one occasion the deceased told her that the accused has beaten her with chappal and made her to stand outside for two hours in the night. But According to her, these details could not be mentioned to the police as she was in a disoriented state of mind. She has not stated to the police that the accused cut and sold the trees standing in the property given to the deceased. It is also stated that she has not stated before the police that it was as directed by the accused that the deceased sought for exchange of the property. She has admitted that she has not witnessed any

acts of the ill-treatment at the hands of the accused. On a perusal of the cross examination of Pw2, I find that most of the allegations that she has raised are not mentioned to the police. It is seen from the evidence of Pws. 1 and 2 that the deceased and the accused and the child were residing in a separate house and at part of the same they were running a tea shop. The evidence of PW4 is that at about 3.30 p.m.when he was taking tea at the shop of the accused he heard the conversation in the nature of the quarrel between the accused and the deceased and the deceased weeping. It was brought out that his version to the police is that he was in the tea shop at 2.45 p.m. Before the court he has stated that he went to the tea shop only at 3.30 p.m. His version in the previous statement that he saw the deceased crying and telling something to the accused is denied by him. As noted by the court below, he is a person living about 1 ½ miles away from the house of the deceased. It was also brought out from the evidence of PW4 that he was a person regularly visiting the shop of the accused but he had never seen

any quarrel among the couple till then. As noted by the court below, the evidence of PW15 cannot be relied to enter upon a conviction as she was brought in subsequently and she was not a prosecution witness in the final report. She has also admitted that she was not questioned by the police.

9. In the circumstances, I find that the evidence adduced to implicate the accused is hardly sufficient to find him guilty. It has also to be noted that the interference in appeal is much limited. The apex court has specifically held that when two views are possible interference is not permitted. (**Chandrabhan v. State of Maharashtra, AIR 1995 SC 2406).** The broad principle is that the presumption of innocence is strengthened if an accused is acquitted by the trial Court and that a reversal of the trial court's judgment should be made in cases where the view taken was not possible on the evidence or perverse with the broad understanding that if two views were possible, the one taken by the trial court in favour of the accused should be

retained.(**Jaisingh v. State of Karnataka, 2007 Cri.L.J.2434).** The decisions cited by the Public Prosecutor to the effect that the appellate court is justified in interfering if the findings of the court below are wholly unreasonable or perverse and not based on record or suffers from serious illegality including ignorance or misreading the evidence on record (**State of Karnataka v. K.Gopalakrishna, AIR 2005 SC 1014; Balram Prasad Agarwal v. State of Bihar, 1997 SCC(CRI.)612)**are not applicable to the facts of the instant case.

In the circumstances, the acquittal is confirmed. The appeal is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A.NO. 874 OF 1999
JUDGMENT

7-9-2007